



0002902022

10

DOUGLAS E. KIRKMAN (State Bar 53892)
 2 Email: dkirkman@wkblaw.com
 PATRICIA J. LEE (State Bar 261463)
 3 Email: plee@wkblaw.com
 WAGNER KIRKMAN BLAINE
 4 KLOMPARENS & YOUMANS LLP
 10640 Mather Blvd., Suite 200
 5 Mather, California 95655
 Telephone: (916) 920-5286
 6 Facsimile: (916) 920-8608

7
 8 Attorneys for Plaintiff Kobra Restaurant Properties, LLC.

9 UNITED STATES BANKRUPTCY COURT
 10
 11 EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION

12 In re:

13 FOOD SERVICE MANAGEMENT,
 14 INC., SIERRA VALLEY RESTAURANTS,
 INC., CENTRAL VALLEY FOOD SERVICES,
 INC., KOBRA ASSOCIATES, INC.,

15 Debtors,

16
 17 KOBRA RESTAURANT PROPERTIES, INC.,

18 Plaintiff,

19 v.

20 BEVERLY N. McFARLAND, in her capacity as
 21 Chapter 11 Trustee for Debtors listed above, CEF
 FUNDING II, L.L.C., CEF FUNDING V, LLC,
 22 EQUITY LENDERS, LLC,

23 Defendants.

24
 25 Case No. 09-40066-C-11

26 Chapter 11

27 (Jointly Administered with Case Nos. 09-
 40068, 09-40212 and 09-40214)

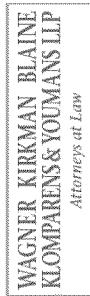
28 Adv. Proc. No.

**29 COMPLAINT/OBJECTION TO
 CLAIMS AND OBJECTIONS BY
 CHAPTER 11 TRUSTEE, CEF,
 EQUITY LENDERS; REQUEST FOR
 ADJUDICATION OF ALL
 OBJECTIONS**

30 Dept: C

31 **DEMAND FOR JURY**

32
 33 PLAINTIFF KOBRA RESTAURANT PROPERTIES, Inc., ("KRP") by and through its
 34 undersigned counsel, and for their request for relief against BEVERLY N. McFARLAND, in
 35 her capacity as Chapter 11 Trustee for Debtors listed above, ("Trustee"), CEF FUNDING II,
 36 L.L.C. and CEF FUNDING V, LLC, (collectively "CEF"), EQUITY LENDERS, LLC,



40 10640 Mather Blvd., Suite 200, Mather, CA 95655
 41 Phone: (916) 920-5286 Fax: (916) 920-8608
 42
 43
 44
 45
 46
 47
 48
 49
 50
 51
 52
 53
 54
 55
 56
 57
 58
 59
 60
 61
 62
 63
 64
 65
 66
 67
 68
 69
 70
 71
 72
 73
 74
 75
 76
 77
 78
 79
 80
 81
 82
 83
 84
 85
 86
 87
 88
 89
 90
 91
 92
 93
 94
 95
 96
 97
 98
 99
 100
 101
 102
 103
 104
 105
 106
 107
 108
 109
 110
 111
 112
 113
 114
 115
 116
 117
 118
 119
 120
 121
 122
 123
 124
 125
 126
 127
 128
 129
 130
 131
 132
 133
 134
 135
 136
 137
 138
 139
 140
 141
 142
 143
 144
 145
 146
 147
 148
 149
 150
 151
 152
 153
 154
 155
 156
 157
 158
 159
 160
 161
 162
 163
 164
 165
 166
 167
 168
 169
 170
 171
 172
 173
 174
 175
 176
 177
 178
 179
 180
 181
 182
 183
 184
 185
 186
 187
 188
 189
 190
 191
 192
 193
 194
 195
 196
 197
 198
 199
 200
 201
 202
 203
 204
 205
 206
 207
 208
 209
 210
 211
 212
 213
 214
 215
 216
 217
 218
 219
 220
 221
 222
 223
 224
 225
 226
 227
 228
 229
 230
 231
 232
 233
 234
 235
 236
 237
 238
 239
 240
 241
 242
 243
 244
 245
 246
 247
 248
 249
 250
 251
 252
 253
 254
 255
 256
 257
 258
 259
 260
 261
 262
 263
 264
 265
 266
 267
 268
 269
 270
 271
 272
 273
 274
 275
 276
 277
 278
 279
 280
 281
 282
 283
 284
 285
 286
 287
 288
 289
 290
 291
 292
 293
 294
 295
 296
 297
 298
 299
 300
 301
 302
 303
 304
 305
 306
 307
 308
 309
 310
 311
 312
 313
 314
 315
 316
 317
 318
 319
 320
 321
 322
 323
 324
 325
 326
 327
 328
 329
 330
 331
 332
 333
 334
 335
 336
 337
 338
 339
 340
 341
 342
 343
 344
 345
 346
 347
 348
 349
 350
 351
 352
 353
 354
 355
 356
 357
 358
 359
 360
 361
 362
 363
 364
 365
 366
 367
 368
 369
 370
 371
 372
 373
 374
 375
 376
 377
 378
 379
 380
 381
 382
 383
 384
 385
 386
 387
 388
 389
 390
 391
 392
 393
 394
 395
 396
 397
 398
 399
 400
 401
 402
 403
 404
 405
 406
 407
 408
 409
 410
 411
 412
 413
 414
 415
 416
 417
 418
 419
 420
 421
 422
 423
 424
 425
 426
 427
 428
 429
 430
 431
 432
 433
 434
 435
 436
 437
 438
 439
 440
 441
 442
 443
 444
 445
 446
 447
 448
 449
 450
 451
 452
 453
 454
 455
 456
 457
 458
 459
 460
 461
 462
 463
 464
 465
 466
 467
 468
 469
 470
 471
 472
 473
 474
 475
 476
 477
 478
 479
 480
 481
 482
 483
 484
 485
 486
 487
 488
 489
 490
 491
 492
 493
 494
 495
 496
 497
 498
 499
 500
 501
 502
 503
 504
 505
 506
 507
 508
 509
 510
 511
 512
 513
 514
 515
 516
 517
 518
 519
 520
 521
 522
 523
 524
 525
 526
 527
 528
 529
 530
 531
 532
 533
 534
 535
 536
 537
 538
 539
 540
 541
 542
 543
 544
 545
 546
 547
 548
 549
 550
 551
 552
 553
 554
 555
 556
 557
 558
 559
 560
 561
 562
 563
 564
 565
 566
 567
 568
 569
 570
 571
 572
 573
 574
 575
 576
 577
 578
 579
 580
 581
 582
 583
 584
 585
 586
 587
 588
 589
 590
 591
 592
 593
 594
 595
 596
 597
 598
 599
 600
 601
 602
 603
 604
 605
 606
 607
 608
 609
 610
 611
 612
 613
 614
 615
 616
 617
 618
 619
 620
 621
 622
 623
 624
 625
 626
 627
 628
 629
 630
 631
 632
 633
 634
 635
 636
 637
 638
 639
 640
 641
 642
 643
 644
 645
 646
 647
 648
 649
 650
 651
 652
 653
 654
 655
 656
 657
 658
 659
 660
 661
 662
 663
 664
 665
 666
 667
 668
 669
 670
 671
 672
 673
 674
 675
 676
 677
 678
 679
 680
 681
 682
 683
 684
 685
 686
 687
 688
 689
 690
 691
 692
 693
 694
 695
 696
 697
 698
 699
 700
 701
 702
 703
 704
 705
 706
 707
 708
 709
 710
 711
 712
 713
 714
 715
 716
 717
 718
 719
 720
 721
 722
 723
 724
 725
 726
 727
 728
 729
 730
 731
 732
 733
 734
 735
 736
 737
 738
 739
 740
 741
 742
 743
 744
 745
 746
 747
 748
 749
 750
 751
 752
 753
 754
 755
 756
 757
 758
 759
 760
 761
 762
 763
 764
 765
 766
 767
 768
 769
 770
 771
 772
 773
 774
 775
 776
 777
 778
 779
 780
 781
 782
 783
 784
 785
 786
 787
 788
 789
 790
 791
 792
 793
 794
 795
 796
 797
 798
 799
 800
 801
 802
 803
 804
 805
 806
 807
 808
 809
 810
 811
 812
 813
 814
 815
 816
 817
 818
 819
 820
 821
 822
 823
 824
 825
 826
 827
 828
 829
 830
 831
 832
 833
 834
 835
 836
 837
 838
 839
 840
 841
 842
 843
 844
 845
 846
 847
 848
 849
 850
 851
 852
 853
 854
 855
 856
 857
 858
 859
 860
 861
 862
 863
 864
 865
 866
 867
 868
 869
 870
 871
 872
 873
 874
 875
 876
 877
 878
 879
 880
 881
 882
 883
 884
 885
 886
 887
 888
 889
 890
 891
 892
 893
 894
 895
 896
 897
 898
 899
 900
 901
 902
 903
 904
 905
 906
 907
 908
 909
 910
 911
 912
 913
 914
 915
 916
 917
 918
 919
 920
 921
 922
 923
 924
 925
 926
 927
 928
 929
 930
 931
 932
 933
 934
 935
 936
 937
 938
 939
 940
 941
 942
 943
 944
 945
 946
 947
 948
 949
 950
 951
 952
 953
 954
 955
 956
 957
 958
 959
 960
 961
 962
 963
 964
 965
 966
 967
 968
 969
 970
 971
 972
 973
 974
 975
 976
 977
 978
 979
 980
 981
 982
 983
 984
 985
 986
 987
 988
 989
 990
 991
 992
 993
 994
 995
 996
 997
 998
 999
 1000
 1001
 1002
 1003
 1004
 1005
 1006
 1007
 1008
 1009
 1010
 1011
 1012
 1013
 1014
 1015
 1016
 1017
 1018
 1019
 1020
 1021
 1022
 1023
 1024
 1025
 1026
 1027
 1028
 1029
 1030
 1031
 1032
 1033
 1034
 1035
 1036
 1037
 1038
 1039
 1040
 1041
 1042
 1043
 1044
 1045
 1046
 1047
 1048
 1049
 1050
 1051
 1052
 1053
 1054
 1055
 1056
 1057
 1058
 1059
 1060
 1061
 1062
 1063
 1064
 1065
 1066
 1067
 1068
 1069
 1070
 1071
 1072
 1073
 1074
 1075
 1076
 1077
 1078
 1079
 1080
 1081
 1082
 1083
 1084
 1085
 1086
 1087
 1088
 1089
 1090
 1091
 1092
 1093
 1094
 1095
 1096
 1097
 1098
 1099
 1100
 1101
 1102
 1103
 1104
 1105
 1106
 1107
 1108
 1109
 1110
 1111
 1112
 1113
 1114
 1115
 1116
 1117
 1118
 1119
 1120
 1121
 1122
 1123
 1124
 1125
 1126
 1127
 1128
 1129
 1130
 1131
 1132
 1133
 1134
 1135
 1136
 1137
 1138
 1139
 1140
 1141
 1142
 1143
 1144
 1145
 1146
 1147
 1148
 1149
 1150
 1151
 1152
 1153
 1154
 1155
 1156
 1157
 1158
 1159
 1160
 1161
 1162
 1163
 1164
 1165
 1166
 1167
 1168
 1169
 1170
 1171
 1172
 1173
 1174
 1175
 1176
 1177
 1178
 1179
 1180
 1181
 1182
 1183
 1184
 1185
 1186
 1187
 1188
 1189
 1190
 1191
 1192
 1193
 1194
 1195
 1196
 1197
 1198
 1199
 1200
 1201
 1202
 1203
 1204
 1205
 1206
 1207
 1208
 1209
 1210
 1211
 1212
 1213
 1214
 1215
 1216
 1217
 1218
 1219
 1220
 1221
 1222
 1223
 1224
 1225
 1226
 1227
 1228
 1229
 1230
 1231
 1232
 1233
 1234
 1235
 1236
 1237
 1238
 1239
 1240
 1241
 1242
 1243
 1244
 1245
 1246
 1247
 1248
 1249
 1250
 1251
 1252
 1253
 1254
 1255
 1256
 1257
 1258
 1259
 1260
 1261
 1262
 1263
 1264
 1265
 1266
 1267
 1268
 1269
 1270
 1271
 1272
 1273
 1274
 1275
 1276
 1277
 1278
 1279
 1280
 1281
 1282
 1283
 1284
 1285
 1286
 1287
 1288
 1289
 1290
 1291
 1292
 1293
 1294
 1295
 1296
 1297
 1298
 1299
 1300
 1301
 1302
 1303
 1304
 1305
 1306
 1307
 1308
 1309
 1310
 1311
 1312
 1313
 1314
 1315
 1316
 1317
 1318
 1319
 1320
 1321
 1322
 1323
 1324
 1325
 1326
 1327
 1328
 1329
 1330
 1331
 1332
 1333
 1334
 1335
 1336
 1337
 1338
 1339
 1340
 1341
 1342
 1343

1 ("EQUITY LENDERS"), hereby state and allege as follows:

2 **INTRODUCTION AND OVERVIEW**

3 1. KRP, CEF, and Equity Lenders have all filed objections to the Chapter
 4 11 Trustee's proposed cure amounts to be paid as a condition to assignment and assumption of
 5 leases of five of the JIB restaurant sites which were sold, with each claiming that it is entitled
 6 to the same back rent payments which were not paid during a period commencing August
 7 2008 after certain addenda to the leases purporting to reduce or forgive rent were signed, but
 8 which were void because they were executed without the consent of the senior lenders, which
 9 was required. While the Trustee is apparently contesting the all of these claims, she has thus
 10 far filed formal objections only to the cure claim which was filed by Kobra Restaurant
 11 Properties, LLC., ("KRP"). Because each of these three claimants is asserting that it has rights
 12 to the same dollars as the other, there are questions of fact and law which are common to the
 13 assertions of all three claimants. Without joinder of all claimants in the same proceedings
 14 there is a danger of inconsistent results. Principles of judicial economy and efficiency indicate
 15 that joinder of the other two claimants and resolution all the claims in the same proceeding is
 16 appropriate. Plaintiff brings this action to insure that the all of the respective parties' claims to
 17 these back rent payments are adjudicated by the Court in the same proceeding.

18 **PARTIES**

19 2. Kobra Restaurant Properties, Inc., is a California corporation with its
 20 principal place of business in Roseville, California.

21 3. Each of CEF II and CEF V (sometimes collectively "CEF") is a
 22 Delaware limited liability company with its principal place of business in Scottsdale, Arizona,
 23 and doing business within the State of California. They are successors in interest to either GE
 24 Commercial Finance Business Property Corporation, or to GE Capital Franchise Finance
 25 Corporation, or similarly named entities, who had made loans on many of the Jack in the Box
 26 sites, including the five which were owned by KRP which are the subject of the cure claims
 27 filed by KRP, CEF, and Equity Lenders. As detailed below, CEF has filed claims asserting
 28 that it is a secured creditor in the above-captioned bankruptcy proceedings.



10640 Mather Blvd., Suite 200, Mather, CA 95655
 Phone: (916) 920-5286 Fax: (916) 920-8608

1 4. Equity Lenders, L.L.C. is a limited liability company organized and
 2 existing under the laws of the State of Illinois, and asserts an interest in the real and personal
 3 property described herein. As detailed below, Equity Lenders has asserted certain "Cure
 4 Amount Objections in connection with the above-captioned bankruptcy proceedings.

5 5. Beverly N. McFarland is the duly appointed Chapter 11 Trustee for the
 6 JIB Debtor's collective chapter 11 cases.

7 **BACKGROUND**

8 **A. Jurisdiction and Venue**

9 6. The court has jurisdiction over this matter pursuant to 28 U.S.C. Sections
 10 157 and 1334. Venue is proper pursuant to 28 U.S.C. Sections 1408 and 1409.

11 **B. The Debtor's Bankruptcy Filing**

12 7. On September 18, 2009, each of the Debtors filed a voluntary petition for
 13 relief under chapter 11 of the Bankruptcy Code.

14 8. On September 30, 2009, the Court entered an order approving the acting
 15 United States Trustee's appointment of Beverly N. McFarland as Chapter 11 Trustee for the
 16 JIB Debtor's collective chapter 11 cases. On October 2, 2009, the Trustee's appointment
 17 became effective upon delivering the requisite bonds to the United States Trustee.

18 **C. The Debtor's Business**

19 9. The Debtors owned 70 Jack in the Box stores throughout Central and
 20 Northern California, which they operated under franchise agreements with Jack in the Box Inc.
 21 The Debtor operated the stores through multiple real property leases, including several leasing
 22 with the real property owner and landlord Kobra Restaurant Properties, Inc.

23 10. On February 17, 2010, the Trustee filed her Motion for Order Approving
 24 Going Concern Sale of Substantially All Operating Assets Free and Clear of Liens, Claims,
 25 Encumbrances, and Interests Pursuant to 11 U.S. C. Section 363 (the "Sale Motion"). Pursuant
 26 to the Sale Motion, the Trustee sought approval of the sale of 61 stores to Stalking Horse
 27 Buyers (as defined in the Sale Motion) to the highest bidders for 5 stores at the conclusion of
 28 an auction or in the alternative, approval of a sale of each store to the highest and best



1 bidder(s) following an auction and sale hearing.

2 11. In connection with the Sale Motion, the Trustee filed a motion for order
 3 to assume and assign executory contracts and unexpired leases (the "Assumption Motion")
 4 [Docket No. 519]. In the Assumption Motion, among other things, the Trustee sought to
 5 establish cure amounts for certain contracts that she proposed to assume and assign to buyers.

6 **E. KRP's Status as Landlord on Five of the JIB Restaurant Sites**

7 12. KRP is or was the landlord of five of the JIB stores to which Debtor
 8 Food Services Management was the lessee, as follows:

	<u>Store Number</u>	<u>Address</u>
10	583	11802 Nevada City Highway, Grass Valley, CA
11	4361	800 East Cypress Avenue, Redding, CA
12	3426	8655 Auburn Boulevard, Citrus Heights, CA.
13	3436	9179 Elk Grove-Florin Road, Elk Grove, CA
14	3438	4820 Laguna Boulevard, Elk Grove, CA.

15 **ASSERTION OF "CURE CLAIMS"**

16 **A. The KRP Cure Claim**

17 13. On January 25, 2010, KRP filed its General Unsecured Claim alleging
 18 that it was owed back rent in an amount that was unknown but believed to be in excess of \$1
 19 million.

20 14. On March 3, 2010, KRP filed an opposition to Chapter 11 Trustee's
 21 Assumption Motion which objected to the proposed cure amounts needed to assume and
 22 assign the leases for the above-described stores.

23 15. On March 16, 2010, KRP supplemented its March 3 opposition, [Docket
 24 No. 716 and Exhibit A, "Supplement"] wherein it objected to the Trustee's proposed set aside
 25 of \$1,193,197.90 as expressed in the Trustee's Omnibus Reply for Leases. By this Supplement
 26 KRP asserted that the proper cure amount was the sum of \$3,482,195.00.

27 / / /

28 / / /

1 **B. The CEF Claims**

2 16. On March 8, 2010, CEF filed its objection to the Trustee's Notice of
 3 Cure Amounts [Docket Number 680, **Exhibit B**] wherein it claimed that each of the store
 4 number sites listed above is or was subject to a first priority lien in favor of CEF V.¹

5 17. In this objection CEF asserted that KRP is the current owner of two of
 6 the five properties in question, including Store Number 583 in Grass Valley Ca, and Store
 7 Number 4361 in Redding California, and that Equity Lenders is the successor in interest by
 8 foreclosure to KRP of the other three sites, namely Store Number 3426 at 8655 Auburn
 9 Boulevard, Citrus Heights, Ca; 3436 at 9179 Elk Grove-Florin Road, Elk Grove, Ca; and 3438
 10 at 4820 Laguna Boulevard, Elk Grove, Ca.

11 18. On March 12, 2010, CEF filed an amended objection which asserted a
 12 cure claim in the amount of \$1,246,175.87, **Exhibit C**, and which further asserted that CEF
 13 was entitled to the back rent claims even as to the three sites which it had been foreclosed upon
 14 by Equity Lenders.

15 **C. The Equity Lenders Claim**

16 19. On March 3, 2010, Equity Lenders filed its objections to the Trustee's
 17 proposed cure amounts (**Exhibit D**) wherein it claimed to be the successor-in-interest by
 18 foreclosure to KRP of three of the sites, namely stores 3426, 3436, and 3438. Equity Lenders
 19 asserted that because it was the Debtor's current landlord with respect to three of the five stores
 20 in question, it rather than CEF or KRP was entitled to be paid the back rent for the period
 21 August 1, 2008 to the date of close of escrow. In particular Equity Lenders asserted that it was
 22 entitled to cure amounts concerning stores 3426, 3436, and 3438, for real property tax
 23 arrearages of about \$25.6 to 28.5 thousand each, plus the greater of 10% of gross receipts, or
 24 base rent for the period August 1, 2008 to close of escrow, less rent paid, which it alleged
 25 totaled the sum of approximately \$490,000 for the three stores, plus the back tax amount.

26 **D. Common Basis for Each of the Claims**

27 20. Each set of claims described above, that is the cure claims asserted by

28 ¹ CEF Objection, Document 680, **Exhibit C**, Paragraph 3
 {13421.01900 / 00512972.DOC.2}

1 KRP, by CEF, and by Equity Lenders is based in part on the same general theory,² and covers
 2 the same or similar time frame for the particular restaurant site in question.

3 21. The basis of CEF's claim was that rent was allegedly owed by FSM to
 4 KRP "**from August 2008 onward.**"³ CEF's objection begins with August 1, 2008 as the
 5 starting date for the claimed cure amount because that is the date the first set of addendums for
 6 each of these stores was executed. These first addendums purported to amend the existing
 7 leases, and due to the deteriorating economy, agreed to "abate" rent for the period August 1,
 8 2008 to February 28, 2009, with the understanding that the abated rent would be rolled into a
 9 note which would be paid over time. Trustee's Exhibit F pages 174, 176, 178, 181.⁴ Then a
 10 second set of addendums was executed for these stores which purported to simply "forgive" the
 11 "abated" rent which was to have been converted to a note, and which instead simply purported
 12 to cut future rent payments in half. Trustee's Exhibit F, pages 175, 177, 179, 180, 182.

13 22. CEF asserted, however, that the addendums were all null and void
 14 because they had been executed without the consent of the senior lender, and in violation of
 15 express provisions of the documents which secured the senior lender's loan.

16 23. Equity Lenders' objections to the cure amounts proposed by the Trustee
 17 are based on the same theory as was CEF's described above: that the addenda executed by
 18 KRP were void because they were done without the consent of the senior lender or Equity
 19 Lenders, and without the consent of Trustee Steve Victor, the bankruptcy court, or the
 20 creditors; it "presumed" that the tenant would have taken full advantage of the lease addenda;
 21 therefore, Equity Lenders is entitled to be paid the back rent which it presumed hadn't been
 22 paid because of the addenda. Equity Lenders objections to the Trustee's proposed cure claim
 23 amounts were filed March 3, 2010, Docket Control Numbers 17 and 18.

24
 25 ² With the exception that KRP and CEF assert back rent as to all five of the stores, whereas Equity Lenders only
 26 asserts claims regarding three of the five, and KRP asserted rights to unpaid back rent for periods prior to August
 27 2008, whereas CEF and Equity Lenders claims were confined to back rent not paid after the addenda were
 28 executed.

³ Chapter 11 Trustee's Objection to Kobra Restaurant Properties, LLC's Proof of Claim [No. 219] And Cure
 Claim, Exhibit B hereto, Paragraph 20, emphasis added.

⁴ Trustee's "Exhibits A Through J in Support of 'Chapter 11 Trustee's Objection to Kobra Restaurant Properties,
 LLC's Proof of Claim [No. 219] and Cure Claim', Docket No. 209.



1 **E. KRP Asserts That the GE Loan Documents Establish KRP's Priority Over**
 2 **GE/CEF at Least as to Some of the Back Rent Payments**

3 25. CEF's claim that it is entitled to the back rents dating from **August 2008**
 4 **onward** is contested and objected to by KRP, and because, among other reasons, CEF
 5 concedes that it did not actually provide notice to either the Trustee or to KRP that it was
 6 terminating the rights of the landlord to receive and collect rents until November 13, 2009,
 7 (CEF Objection, Docket Number 680, **Exhibit B**, Paragraph 5).

8 **F. KRP Asserts That Equity Lenders is Not Entitled to Assert the Cure Claim**

9 26. KRP contests and objects, and presumably CEF, and the Trustee will
 10 also object to and contest Equity Lenders' claimed entitlement to any back rents because: any
 11 assignment of rents which Equity Lenders may have received in connection with its loan
 12 documents is trumped by GE's senior loan documents which assigned all rights to receive rent
 13 to it, and because Equity Lenders was paid in full for all outstanding obligations which the
 14 debtor owed to Equity Lenders at the time it credit bid the full amount of the indebtedness on
 15 each of the properties it foreclosed upon at the time of the Trustee's sales. See Exhibit H to the
 16 Trustee's objections, at pages 186-201, Docket Control Number WS-27, indicating that for
 17 Store Number 3426 the amount of the unpaid debt at the time of the trustee's sale was
 18 \$150,000, and the amount paid by Equity Lenders, the grantee, was \$150,000; for Store
 19 Numbers 3436 and 3438 the debt and amount paid was \$400,000.

20 **G. Chapter 11 Trustee's Objection to Kobra Restaurant Properties, LLC's**
 21 **Proof of Claim [No 219] and Cure Claim**

22 27. On or about April 12, 2010, the Trustee filed her objections to KRP's
 23 claims entitled "Chapter 11 Trustee's Objections to Kobra Restaurant Properties, LLC's Proof
 24 of Claim [No 219] and Cure Claim", **Exhibit E**.

25 28. In her objection to KRP's claims the Trustee asserted, *inter alia*, without
 26 citation of authority, that KRP couldn't assert claims as to three of the five restaurants because
 27 it had been foreclosed out by Equity Lenders, and it was thus no longer the landlord as those
 28 three restaurants; that KRP could not assert claims to back rents for the other two store sites



10640 Mather Blvd., Suite 200, Mather, CA 95655
 Phone: (916) 920-2286 Fax: (916) 920-8608

1 because rights to receive those rents had been assigned to the senior lender as security for all
 2 five of the sites, and because the senior had asserted their own cure claims for those same
 3 amounts. KRP disputes the validity of all of the Trustee's claims which she asserts in this
 4 objection. Some of the basis upon which KRP disputes these claims have been asserted in
 5 "Kobra Restaurant Properties Preliminary Opposition to Trustee's Objection to KRP's Cure
 6 Claim" filed on or about May 19, 2010, **Exhibit F**.

7 **RELIEF REQUESTED**

8 Plaintiff KRP request that the Court adjudicate all of the aforementioned
 9 objections or cure claims filed by each of the parties, as well as the Trustee's objections, in the
 10 same proceeding.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff KRP prays that judgment be entered in Plaintiff's favor and
 13 against Defendants as follows:

14 1. With respect to KRP's General Unsecured Claim filed January 25, 2010 and its
 15 Opposition to the Trustee's Assumption Motion filed March 3, 2010, and its supplemental
 16 opposition filed March 16, 2010, and the Chapter 11 Trustee's Objections to Kobra Restaurant
 17 Properties, LLC Proof of Claim [No. 219] and Cure Claim filed on or about April 12, 2010;
 18 that the Court determine that KRP is entitled to an order requiring the Trustee pay its cure
 19 claim in the amount of \$3,482,195.00, or any other amount which the Court deems
 20 appropriate; that the Court determine that the Trustee is not entitled to prevail on any of her
 21 objections;

22 2. With respect to CEF's cure claim filed March 8, 2010, entitled "Objection of
 23 Secured Creditors CEF Funding L.L.C and CEF Funding V., LLC to Cure Amounts to be Paid
 24 As a Condition to Assignment and Assumption of Leases (JIB Sites), Document No. 680, as
 25 well as its amended cure claim filed March 12, 2010, entitled "Amended Objection of Secured
 26 Creditors CEF Funding II, L.L.C. and CEF Funding V., LLC to Cure Amounts to be Paid as
 27 Condition to Assignment and Assumption of Leases (JIB Sites)" Document No. 694, that the
 28 Court determine that CEF is not entitled to prevail on its claims in the amounts asserted, or in



1 any other amount(s) whatsoever;

2 3. With respect to the claims filed by Equity Lenders on or about March 3, 2010
3 entitled "Cure Amount Objection by Landlord Equity Lenders, LLC, and Party-in-Interest B-Y
4 Investments, Inc."; that the Court determine that Equity Lenders is not entitled to prevail on its
5 claims in the amounts asserted, or in any other amounts whatsoever;

6 4. That the Court set discovery schedules which are applicable to all concerned;

7 5. That the Court grant KRP its costs of suit;

8 6. That the Court grant such other and further relief as is just and warranted under
9 the circumstances.

DEMAND FOR JURY

Plaintiff respectfully requests trial by jury.

Dated: September 3, 2010

WAGNER KIRKMAN BLAINE
KLOMPARENS & YOUNG LLP

By: /s/ Douglas E. Kirkman
DOUGLAS E. KIRKMAN

10640 Mather Blvd., Suite 200, Mather, CA 95655
Phone: (916) 920-5286 Fax: (916) 920-8608